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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION

Initial report of States parties due in 1992

Addendum

# VENEZUELA

[9 July 1997]

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## INTRODUCTION

1. In 1990, Venezuela ratified the Convention on the Rights of the Child and, in so doing, undertook to implement its provisions throughout the country. This was a matter of priority for the Venezuelan Government even before the World Summit for Children: many of its social policies on education, health and nutrition focused on children. By the same token, the protection of children in particularly difficult situations (abandoned and delinquent children, for example) has also been given a great deal of attention, since there is even special legislation relating to children's issues (the Minors' Protection Act) and a central government body, the National Children's Institute (INAM), to protect the interests of children living in Venezuela.

2. The ratification of the Convention took place at a time of considerable change in the country. First of all, the economic adjustment process that began in 1989 involved the formulation of a whole set of new social programmes focusing on the most vulnerable population groups. Children were one of the main groups targeted by the new government measures. The innovative direction of the national social policy in force since 1989 thus created a framework for the implementation of the provisions of the Convention on the Rights of the Child.

3. However, this favourable environment went hand in hand with other changes which made it difficult to improve the situation of children. Unrest as a result of the implementation of the adjustment measures led to a climate of political instability which started with the events of 27 and 28 February 1989 (the so-called "Caracazo") and two attempted military coups in 1992 and ended with the overthrow of the President in 1993.

4. This political state of affairs badly affected the continuity of the policy direction taken starting in 1989. Structural and operational changes in public sector agencies which were needed to increase the effectiveness and quality of State-run social services were also severely hampered by the situation of instability and uncertainty.

5. As a result of the serious financial crisis and the crash of the country's foremost banks in 1994, the Government had to focus much of its attention on the recovery of the financial sector, the key to the opening up of the economic system and a crucial ingredient of sustainable development. These elements all led to the gradual deterioration of social infrastructure, a problem that has beset the country since the debt crisis of the 1980s. The new approach to social policy resulted in the establishment of programmes designed specifically for the most vulnerable segments of the population, but they were not incorporated into existing programmes, to which no changes were made.

6. The foregoing may be summarized as follows: straggling social sector institutions are the main obstacle to the implementation of the principles embodied in the Convention at the national level. Their inflexibility and the resulting difficulty of coordination among the various governmental agencies,

as well as the changes needed for greater management efficiency, have been the main stumbling blocks to the achievement of the country's targets based on the guidelines contained in the Convention on the Rights of the Child.

7. Despite the foregoing, the Government has admittedly been unstinting in the efforts it has made in recent years to improve the situation of children in general and to fulfil the commitments which are provided for in the Convention on the Rights of the Child and will be described in greater detail below.

## I. GENERAL MEASURES OF IMPLEMENTATION

8. This section describes the main legal and administrative measures Venezuela has taken to implement the Convention. It also refers to the mechanisms for the dissemination of the measures to give effect to the principles of the Convention and of the Government's reports on implementation.

### A. Measures taken to harmonize national law and policy with the provisions of the Convention

9. Domestic legislation shares many of the principles embodied in the Convention on the Rights of the Child, although it has not succeeded in breaking away from the concept of the protection of children and adolescents.

10. Like most Latin American legislation adopted between the 1930s and the 1980s, the Minors' Protection Act followed the approach on which legislation on minors was based at that time, i.e. the "irregular situation" approach. This approach was until recently followed by most lawmakers, jurists and judges in the region and it was the dissemination of the theory of human rights and the adoption of the Convention on the Rights of the Child that enabled Venezuela to embark on a wide-ranging debate on the protection-oriented approach on which the Convention is based. Immediately after Venezuela ratified the Convention, an intensive campaign was launched to define the difference in the thinking behind the Minors' Protection Act and the Convention on the Rights of the Child. The campaign was a success and, in 1996, under the auspices of the National Children's Institute (INAM), a bill was drafted to incorporate the Convention's protection-focused approach. The bill is currently being discussed by the broad national sectors concerned with children, with a view to achieving a consensus that will expedite its adoption by parliament.

11. There is already some consensus on the need to amend the regulations governing children and adolescents living in particularly difficult circumstances. That section of the Minors' Protection Act is the farthest from the protection-based principles of the Convention on the Rights of the Child. However, it is a good thing to refer to the progress the country has made on the protection of human rights and to point out that the ratification of the human rights conventions has served as a sound theoretical basis for breaking away from the irregular situation approach. In the Venezuela legal system, the international conventions ratified by Venezuela take precedence over internal law (art. 8 of the Code of Civil Procedure).

12. The many international regulations governing the protection and exercise of human rights mean that the Convention on the Rights of the Child has a very favourable normative framework for its implementation. This, in addition to the fact that it is "self-executing" has enabled many judges to apply it in cases brought before their courts.

13. The discussion of the bill to amend the Minors' Protection Act, whose name alone, "Protection of Children and Adolescents Organization Act", gives an idea of the change of approach, has involved juvenile court judges in a far-reaching debate on the need for a paradigm shift. The debate has included governmental and non-governmental child care organizations, which have put forward various points of view on the content of the bill.

14. The discussion of the bill may also be considered a good example of a pluralist debate designed to convince social partners of the need to adopt the protection-based approach. The bill places the emphasis on the child as a subject of law, not as an object of protection.

15. With a view to involving those mainly affected by the discussion of the bill, a number of activities have been carried out to find out what children think. They include the following:

(a) The Second Children and Youth Parliament was held in July 1996 in the Senate Chamber of the Congress of the Republic to enable government authorities and parliamentarians to hear a set of proposals made by children themselves;

(b) Municipal Children and Youth Parliaments were held in the southern and eastern districts of Caracas: Baruta, El Hatillo and Sucre;

(c) A national opinion poll, "Voces para el Cambio" ("Voices for Change"), was conducted to discover the views of the population between the ages of 9 and 17. It was conducted periodically from 1995 and its findings were announced in the periodical of the same name, which had brought out nine issues by the end of 1996 (see annex).

16. A major effort was made to bring Venezuelan legislation into line with the principles embodied in the Convention on guardianship, custody and adoption. In 1996, Venezuela ratified three international conventions on those questions:

(a) Convention on the Civil Aspects of International Child Abduction. Date of ratification: 19 July 1996;

(b) Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. Date of ratification: 8 October 1996; and

(c) Inter-American Convention on the International Return of Children. Date of ratification: 29 May 1996.

B. Existing or planned mechanisms at the national or local level for coordinating policies relating to children and for monitoring the implementation of the Convention

17. As mentioned above, at the time of ratification of the Convention on the Rights of the Child, Venezuelan government policy already provided an atmosphere conducive to stepping up activities on behalf of children.

18. However, with a view to spelling out that commitment in national policies and plans, following the World Summit for Children in August 1991, the Venezuelan Government organized the National Conference on the Rights of the Child in August 1991. The aims of the Conference were:

(a) To analyse and evaluate the situation of children, with the participation of public and private bodies, for the purpose of shifting the focus of child care policies;

(b) To formulate a plan of action to involve all national child care sectors in the commitment not only to follow the guidelines established in the Convention, but to achieve the goals for children by the year 2000.

19. A Presidential Advisory Commission on the Rights of the Child was established to organize the event and was composed of representatives of government child care agencies and the main non-governmental organizations working in that field. The Commission's mandate was to promote, monitor and coordinate the activities carried out in 1991 in connection with the National Conference.

20. As part of the preparations for the Conference, a number of activities were carried out to analyse the situation of children. First of all with the help of a technical advisory team, progress was made on the formulation of the outline of the National Plan of Action that was to guide all policies relating to children in the light of the main problems affecting that sector of the population. Secondly, encouragement was given to the organization of national round tables focusing on specific topics relating to the sectors involved in child care, such as: health, education and children in particularly difficult situations. Lastly, regional meetings were held with the participation of representatives of municipal governments.

21. This process culminated in the holding of regional conferences in all the country's States that built up to the National Conference on the Rights of the Child, which was well attended by central, regional and local government representatives, as well as by various non-governmental child care organizations from all over the country. The major conclusions of the Conference were the following:

(a) Approval of the outline of the National Plan of Action for children;

(b) Signing of the Agreement between the National and Regional Executive Branches on behalf of Children, which endorses the broad lines agreed on at the Conference and undertakes to prepare regional plans of action to facilitate the implementation of the National Plan of Action.

22. In this way, the National Conference on the Rights of the Child laid the foundations for the country's child care policy, while achieving a consensus of the partners involved in the implementation of the National Plan of Action.

23. The main purpose of the National Plan of Action was to give continuity to policies designed to improve the situation of children, or, in other words, to establish broad outlines that would be maintained, regardless of any national, regional or local government changes. The aim was also to provide a framework for coordination among the agencies connected with child care policies.

24. In this regard, the National Plan of Action diagnoses problems in the areas of survival, development and protection and suggests a strategy for dealing with them. The targets, executing agency, implementation time and indicators for the follow up to and monitoring of the plan's results are established for each area.

25. The formulation of the National Plan of Action involved the mammoth task of analysing the situation of children and their critical problems, as well as efforts to pull the entire child care policy together so that all the activities undertaken by the Government would be aimed at a single common target: the achievement of the goals set for the year 2000 and the implementation of the provisions of the Convention on the Rights of the Child.

26. In 1992, the Ministry of the Family completed the formulation of the Local Plan of Action for Children (PLAFI), which was intended to identify the regional and local goals and strategies of action for achieving the national objectives set in the National Plan of Action.

27. Despite the enormous interest shown and the efforts made to formulate the National Plan of Action, there were some operational obstacles to the coordinated implementation of all its components. In addition to some existing formulation problems (such as the lack of quantified targets, especially in the development and protection areas), difficulties stemmed from the fact that there was no organization capable of coordinating and monitoring implementation by the government agencies involved. As mentioned in the introduction to this report, these problems affect not only social child care policies, but the public administration as a whole. The solution to these problems is one of the foremost challenges facing the Government's reform proposals.

28. In order to solve these problems, an attempt was made in 1995 to go back to the approach used in the formulation of the National Plan of Action. With the cooperation of the Central Coordination and Planning Office of the Office of the President of the Republic (CORDIPLAN), a process of joint intersectoral work by public sector child care bodies was started up again to establish a new framework for joint action. The outcome was the Intersectoral Plan of Action for Comprehensive Child and Youth Care, which was formulated in consultation with the main non-governmental organizations working in that field. The final document was completed in May 1997 and is to serve as guidelines for child and youth policies.

29. This new plan is based on the same assumptions as the National Plan of Action and, consequently, on the commitments resulting from the World Summit for Children and the Convention on the Rights of the Child. Accordingly, its formulation did not involve any break with the overall approach to children's policy during the preceding period. The Intersectoral Plan of Action is also based on the general proposals stated primarily in the Ninth National Plan, also taking account of the new economic adjustment situation that prevailed in 1996, the short-term guidelines for which are set out in Agenda Venezuela.

30. Against the backdrop of this overall approach, goals for the year 2003 have been set in the various areas (survival, protection and development), with strategies for achieving each one. In that connection activities that began in 1991 are being given new impetus with a view to significant improvements in the situation of children in the years to come.

31. With these proposed general guidelines and targets as a basis, the Social Cabinet (a body composed of all ministers in the social sector), chaired by the Minister of the Family, is responsible for coordinating social policy in general and children's policy in particular. It is to be hoped that consensus and joint action at the highest levels of the agencies involved will help solve the past coordination problems of the various social sector institutions.

### C. Measures taken to make the Convention widely known

32. Venezuela ratified the Convention on the Rights of the Child in August 1990 and immediately adopted measures to publicize the Convention in order to create an atmosphere of motivation and consciousness-raising with a view to establishing a climate conducive to the holding of the above-mentioned National Conference on the Rights of the Child.

33. The main goal of the communication strategy was to publicize the rights provided for in the Convention in order to make the general public aware of the public and private organizations involved in this field. It covered the entire range of the country's mass media (radio, print press and television) and its content reaffirmed the importance of catering to the needs of children. The purport of the message was that child care must be a priority. In that connection, the campaign slogan, "Primero los niños" ("Children first"), speaks for itself.

34. A great deal of information was also published in connection with this campaign and included pamphlets and posters informing the public at large about the rights of the child, which were guaranteed in the Convention. This material was widely circulated through government networks and child care organizations.

35. As stated above, the Government sponsored and promoted the organization of regional conferences throughout the country. These conferences not only discussed the formulation of the National Plan of Action, but also helped to disseminate the principles of the Convention on the Rights of the Child.

36. In addition to the strategy adopted during the preparation of the National Conference on the Rights of the Child, other national, regional and local events were held, including a 1994 UNICEF-sponsored meeting with the Mayor of Caracas entitled "Alcalde Amigo de los Niños y Niñas" (The Mayor, the Children's Friend), an event that attracted wide media coverage.

37. Attention is also drawn to the work of non-governmental child care organizations in this field. Through the media, they too have helped familiarize the population with the provisions of the Convention on the Rights of the Child.

### D. Measures taken to disseminate reports

38. With a view to its dissemination, this report will be made available to children's and young people's organizations, to the Judiciary Council for circulation to judges with jurisdiction in family and juvenile cases, the Attorney-General of the Republic, the Commission for Social Affairs of the Congress of the Republic and the National Coordinator of Non-Governmental Child Care Organizations (CONGANI). It will also be transmitted to regional and local Governments to ensure that it is circulated throughout the national territory.

## II. DEFINITION OF THE CHILD

39. The Convention on the Rights of the Child is based on a positive and explicit definition of the child, which states that "a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier" (art. 1). In Venezuela, however, the age-old legal term "menor" (minor) is used in most cases, but, as a result of the dissemination of the Convention on the Rights of the Child, it is being replaced by the term "niño" (child). There is an intensive campaign, especially by non-governmental organizations, for the use of the term "child" to refer to a minor.

40. Venezuelan legislation contains several definitions of the child. The most important is to be found in the special law by which most situations that affect children and adolescents are governed. The Minors' Protection Act establishes that its provisions protect and apply to all person under 18 in the Republic. Protection applies to the gestation period (art. 2 of the Minors' Protection Act) and, with regard to maintenance, until the age of 21 (art. 3 of the Minors' Protection Act).

41. Under the Venezuelan Civil Code, majority is attained at age 18 (art. 18). Minors under 18 are subject to the authority of their parents. In Venezuela, the exercise of parental authority is shared by both parents and is governed by the Civil Code and the Minors' Protection Act.

42. The fact that majority is attained at 18 does not mean that children may not personally exercise rights before that age. There are a number of provisions that guarantee that children's views are heard on issues that concern them and even allow them to exercise their rights before the administrative and judicial authorities.

43. Under the Minors' Protection Act, the juvenile judge has the obligation, before ordering any protection measures, to hear a child who is subject to legal proceedings for being in an irregular situation. The provision does not set a lower age limit so that any child capable of expressing himself must be heard before being subjected to a court order (art. 102 of the Minors' Protection Act). The right to be heard in judicial proceedings will be referred to in detail in the relevant section of the present report.

44. Marriage is a free and voluntary act. For a marriage to take place, the woman must be at least 14 and the man 16 (art. 46 of the Civil Code). If the girl is pregnant and the boy acknowledges that he is the father, the minimum age provided for in article 46 of the Civil Code is waived (art. 62 of the Civil Code). Minors under 18 need parental permission to marry. Should the parents refuse it, the marriage may be authorized by the juvenile court (art. 59 of the Civil Code).

45. The contracting parties are emancipated by marriage before the age of 18. In the Venezuelan legal system, emancipation confers the capacity to perform ordinary administrative acts. The authorization of the family court is required for any act involving more than ordinary administration (art. 382 of the Civil Code).

46. Minors may recognize their children when they have reached the age of reproduction, but require their parents' authorization if they are under 16 (art. 222 of the Civil Code), although maternal filiation is determined by childbirth and proven by the birth certificate (art. 197 of the Civil Code).

47. The age of sexual consent is 12. Criminal legislation considers sex before that age to be an offence punishable by 5 to 10 years' imprisonment.

48. Recruitment into the army may start at 18, that being the earliest age for Venezuelans to be drafted to fulfil their military obligations (art. 4 of the Military Conscription and Enlistment Act).

49. Compulsory schooling ends with the completion of basic education, which covers a period of at least nine years. Children up to the age of 15 may receive compulsory basic education only under the attendance system, in shifts from 7 a.m. to 6 p.m. Attendance at night is prohibited before that age. The purpose of this measure is to ensure that a child's main activity is study. Compulsory basic education should be completed by 14, the age at which children are legally entitled to work.

50. The minimum age for work or employment is 14. However, ability to work does not necessarily imply the possibility of working. Employment before the age of 16 is subject to the authorization of a child's parents or the person exercising parental authority. Although children may work at 14 and, in some cases, at 12, there are certain types of activity for which it is prohibited to hire children, as will be explained in the section of this report on the regulation of child labour.

51. The capacity to work at the age of 14 permits the performance of activities deriving from the work contract (art. 248 of the Organic Labour Act). Child workers may join trade unions, but must attain the age of majority in order to participate in the management or administration thereof (art. 404 of the Organic Labour Act).

52. From the age of 14, children who have been so authorized by their parents may keep savings accounts and use them freely.

53. At the age of 16, children may perform any type of legal act relating to the protection of works created by them and exercise the rights conferred by copyright, on the same terms as an emancipated minor. The parents or the person exercising parental authority must be present at any proceedings resulting from a child's copyright and legal acts connected with works created by him (arts. 31 and 32 of the Copyright Act).

54. Criminal responsibility is acquired at the age of majority. Before the age of 18, the person is deemed to be exempt from criminality responsibility (art. 1 of the Minors' Protection Act).

55. The sale of alcoholic beverages and psycho-pharmaceutical substances to persons under 18 is prohibited (art. 20 of the Minors' Protection Act).

## III. GENERAL PRINCIPLES

### A. Non-discrimination (art. 2 of the Convention)

56. The Constitution of the Republic is eloquent in its guarantee of non-discrimination against children, as established in article 2 of the Convention on the Rights of the Child. The text of the Constitution provides that measures to ensure the full development of every child must be taken without discrimination of any kind (art. 74).

57. The Constitution guarantees all children living in its national territory the right not to be subjected to any measure which may be taken either by a public body or by private individuals or institutions and which involves discrimination based on race, sex, creed or social status (art. 61). The Constitution also prohibits any mention of filiation in identity documents (art. 61). In the event of any action or omission on the part of a Government agency or private institution or individual which involves discrimination, the child has the right to appeal to the juvenile courts in accordance with the Organic Act on Remedies of Protection for Constitutional Rights and Guarantees.

58. The Minors' Projection Act provides that one of its aims is to prevent discrimination of any kind against children and to protect them from practices and teachings that may foster discrimination or religious intolerance (art. 1).

59. The Organic Education Act guarantees the right to receive an education without discrimination of any kind based on race, sex, creed or economic, social or any other status (art. 6).

60. The Organic Labour Act prohibits any discrimination in working conditions on the basis of age (art. 26). On the subject of wages, it is specifically prohibited to establish differences in remuneration for adult and child labour (art. 258).

61. Venezuelan legislation guarantees health protection for all the country's inhabitants, without discrimination of any kind (art. 76 of the Constitution of the Republic and art. 3 of the National Health System Organization Act).

B. Best interests of the child (art. 3 of the Convention)

62. The best interests of the child are specifically provided for in the Minors' Protection Act and are the beacon that should guide all legal and administrative action by child welfare agencies (art. 5). The purpose of the Act is "to protect the interests of minor children and establish their right to live in conditions enabling them to achieve their normal biological, psychological, moral and social development" (art. 1). The Act must be interpreted primarily in the interests of minors (art. 5) and the juvenile courts are competent to hear all cases in which the interests of a minor are at stake (art. 136). The juveniles courts must, where appropriate, endeavour to bring about agreement and conciliation between the parties for the sake of the minor concerned.

63. The objective of the National Children's Institute is to guarantee that all administrative and judicial measures are taken with full respect for the best interests of the child and to institute any type of proceedings in favour of the child (art. 1 of the Act on the establishment of INAM).

64. Another expression of the best interests of the child is the provision requiring the Venezuelan Government to use all possible means to foster the stability and well-being of the family as the fundamental institution for the training and protection of minors (art. 73 of the Constitution of the Republic and art. 8 of the Minors' Protection Act).

65. With regard to intercountry adoption, it is explicitly stated that safeguards must be established to ensure that adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law (art. 1 of the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption).

66. Article 261 of the Civil Code provides that parental authority must be exercised jointly by the parents in the interests and for the benefit of the child and the family. Where the parents live in separate residences or in the event of divorce or annulment of the marriage, the court must take the child's best interests into account when granting custody guardianship and to one of the parents (art. 265 of the Civil Code and art. 40 of the Minors' Protection Act).

67. Other examples of the best interests of the child are:

(a) The granting of visiting rights to the grandparents and the possibility of granting such rights to anyone who has acted as the child's guardian and to other relatives (art. 42 of the Minors' Protection Act);

(b) The establishment of a summary procedure by which the court decides the form and frequency of visits and of a brief and prompt procedure for hearing custody and maintenance cases (Book II, chap. II, sect. III, of the Minors' Protection Act);

(c) The establishment of the right of an unrecognized child born out of wedlock to claim maintenance from his parents, provided that the court deems the evidence that has been produced sufficient to determine filiation (art. 44 of the Minors' Protection Act);

(d) The provision explicitly empowering the juvenile court to order a social, psychological or psychiatric report on a minor and his representatives in custody proceedings and the provision establishing that, in all cases requiring the settlement of disputes involving the child and the family, the opinion of professionals may be heard (art. 63 of the Minors' Protection Act);

(e) The obligation of secrecy incumbent on officials taking part in cases involving minors; and the ban on the publication of information concerning minors who have been the victims of or have committed crimes (arts. 17, 18 and 19 of the Minors' Protection Act);

(f) The draft Protection of Children and Adolescents Organization Act reproduces the wording of article 3 of the Convention on the Rights of the Child, stating that the purpose of the Act is "to protect the best interests of children and adolescents ..." (art. 1).

### C. The right to life, survival and development (art. 6 of the Convention)

68. With regard to the right to life, survival and development, there is a broad range of legal provisions that guarantee the child's development and establish guidelines for their full implementation. Since the legal provisions do not have the same rank and deal with broad topics linked to social rights, each of these rights will be referred to separately.

69. The right to life is inviolable and has constitutional rank (art. 58 of the Constitution). The Constitution states that the life of the child is protected from the moment of conception (art. 74). A similar provision is contained in the Minors' Protection Act which extends such protection to the gestation period (art. 8). Special protection is provided for the foetus under the Civil Code. For the purpose of guaranteeing the rights of a foetus, it is considered to have been born when its interests are at stake and its live birth suffices for it to be deemed a person (art. 17).

70. A prison sentence imposed on a pregnant woman is suspended until six months after childbirth, provided that the child is born live (art. 64 of the Penal Code).

71. The right to protection of health has constitutional rank (art. 76). The Constitution and the provisions of the Minor's Protection Act guarantee children's access to health in order to ensure their survival and development. In particular, the Constitution orders that the necessary measures must be taken to ensure the full protection of every child (art. 74). The Minors' Protection Act provides that the State must supply resources required to ensure that every child is duly cared for and fed and that his health is protected. Should the persons exercising parental authority fail to fulfil that obligation, the State must do so (art. 1, para. 2), as specifically stated in article 6 of the Convention on the Rights of the Child.

72. The purpose of the national health system is to provide health services designed not only to eliminate disease, but also to promote the physical, mental and social well-being of the country's inhabitants (art. 4 of the National Health System Organization Act). Health care for children is emphasized not only in the legal provisions in force, but also in the social policies currently being implemented by the Venezuelan Government. Accordingly, a number of programmes have been designed to strengthen child development and survival activities.

73. First of all, the Extended Material and Child Programme (PAMI) is intended to encourage mothers and their children to take advantage of primary health care services by offering a direct subsidy in the form of a supplement to the mother's and/or child's diet (milk or lactovisoy, a high-calorie formula). This measure encourages the more vulnerable strata of the population to use the health services, while offering a product that provides nutritional assistance.

74. Secondly, the focus of the action of the National Nutrition Institute (INN) is the child population. The school milk, breakfast, snack and canteen programmes supplement the diet of poor children. While INN runs other programmes as well, its main focus is children of school and pre-school age.

75. The Day-Care Home Programme provides comprehensive care in the fields of health, nutrition, education and psycho-affective development for pre-schoolers who live in the country's poorer areas and do not attend regular schools. These centres provide children not only with 80 per cent of their nutritional requirements, but also with full attention and care, which help promote their development.

### D. Respect for the views of the child (art. 12 of the Convention)

76. The views of the child must be heard in all proceedings referred to in the chapter of the Minors' Protection Act on children who have been abandoned, are at risk or have broken the law (art. 102 of the Minors' Protection Act).

77. The court may not order adoption without first hearing the views of a child aged 12 or more (art. 13 of the Adoption Act). In the case of intercountry adoption, the child's wishes or views must be taken into account, even if he or she is under 12 (art. 4 (d) (2) of the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption).

78. With regard to the international return of children, the judicial or administrative authority of the requested State may refuse to order the child's return if it finds that the child is opposed to it and if, in that authority's judgement, the child's age and maturity warrant taking its views into account (art. 11 of the Inter-American Convention on the International Return of Children).

79. When authorizing the change of name for a child over 12 whose filiation is explicitly established, the court may hear the child's views (art. 237 of the Civil Code).

80. The juvenile court must hear the views of a child aged at least 16 years when authorizing acts that involve more than the ordinary management of the child's property (art. 269 of the Civil Code).

81. The juvenile court must hear the views of a child aged at least 12 years when deciding which of the grandparents is to be awarded guardianship (art. 308 of the Civil Code).

82. The juvenile court must hear the views of a minor aged at least 15 years and in the care of a guardian in cases where it is instructed by the Guardianship Council on the disposition of the minor's property (art. 334 of the Civil Code).

83. When deciding the place where a minor aged over 10 years is to be raised and educated, the court may hear the minor's views when the guardian is not a grandparent (art. 348 of the Civil Code).

## IV. CIVIL RIGHTS AND FREEDOMS

### A. Name and nationality (art. 7 of the Convention)

84. Nationality is acquired in Venezuela by the mere fact of being born in the territory of the Republic, irrespective of the legal status or nationality of the parents. The Constitution guarantees the right of every child, regardless of his filiation, to know who his parents are and to have an identity (art. 75). Effect is given to these two constitutional principles in domestic legislation, the provisions of which are intended to create a simple framework for the timely registration of children in the civil register.

85. The Minors' Protection act guarantees every child the right to be recognized by his parents, regardless of their civil status (art. 1 of the Minors' Protection Act).

86. The Venezuelan Government has the obligation to provide the means for the recognition and timely registration in the civil register of children born in Venezuelan territory. The National Children's Institute has the obligation to process the registration of children when, for whatever reason, they have not been registered by their parents (art. 10 of the Minors' Protection Act). The administrative authorities have the obligation to register every birth that occurs in the territory of the Republic (art. 464 of the Civil Code). The administrative authorities of State-run hospitals and health centres have

the obligation to prepare the birth certificate and submit it to the Registrar General of the parish or municipality in whose jurisdiction of the birth took place (art. 1 of the Family Protection Act).

87. The declaration of a birth is a personal act that must be performed by the parents in the presence of the registrar with jurisdiction in the place of birth. The only requirements are the presentation of the infant and a statement by the parents. The public official may exempt the parents from the requirement to present the infant. There is also an obligation on the part of the public official to travel to the place where a birth took place if it has not been declared by the parents. Failure to fulfil this obligation is punishable by dismissal (art. 464 of the Civil Code).

B. Preservation of identity (art. 8 of the Convention)

88. Venezuelan civil legislation allows identity to be established by various probative means, such as a declaration by the parents in documents other than the birth certificate, by possession of civil status or by a lawsuit to obtain recognition (art. 198 of the Civil Code).

89. The parents' loss of nationality does not affect that of their children or their right to a name. In the Venezuelan legal system, the loss of nationality is subject to tight controls, even if the nationality was acquired by naturalization, in which case its grant is discretionary, as opposed to the case of the revocation of nationality, which requires a court decision (art. 39 of the Constitution).

90. In order to preserve the cultural identity of foreigners residing in Venezuelan territory, civil law allows the application of their own laws relating to the status and capacity of persons in cases authorized by private international law (art. 26 of the Civil Code). Likewise, under the Organic Education Act, the education system also affords opportunities for Venezuelan indigenous communities to express their cultural identity.

C. Freedom of expression (art. 13 of the Convention)

91. Freedom of expression is guaranteed by the Constitution and the international human rights agreements ratified by Venezuela. This constitutional guarantee applies to all natural and legal persons living in the national territory, including children. The exercise of freedom of expression enjoys a privileged place in the education system. The basic purpose of education is the full development of the personality and the moulding of healthy, educated, discerning human beings capable of living in a just and free democratic society (art. 3 of the Organic Education Act).

92. In order to train men and women capable of participating actively in their community and expressing their opinions, the education system provides for the election of student representatives at all educational levels, thus giving children an opportunity to learn to participate and elect their representatives in a democratic system. Student representatives take part in decision-making within their educational unit through the Educational

Community, a body composed of teachers, parents and student representatives whose function is to work together to help achieve educational objectives (art. 73 of the Organic Education Act).

93. Children also have their own channels of expression. The country has a regional television network run by children and a radio station also run by children. Commercial television has created programmes designed to listen to and disseminate children's views. Special mention should be made of the programme "Hay que oír a los niños" ("children must be heard"), which was successfully broadcast on a weekly basis for a number of years and was awarded an international prize in Belgium in 1996.

D. Access to appropriate information (art. 17 of the Convention)

94. Access to diversified information is guaranteed by the existence of media operated by the Government and various private bodies. There are also media run by churches of different denominations and by institutions of civil society. For instance, the radio spectrum provides for community broadcasts by neighbourhoods, churches and social service agencies.

95. In order to protect children from information that is difficult for them to process at their age, the Venezuelan Government has regulated the content of mass media programmes. In the first place, it is a legal obligation for all media, when so required by the Government, to broadcast educational programmes in keeping with the objectives of training discerning human beings capable of living in a democracy (art. 11 of the Organic Education Act). The publication and dissemination through any medium of information that may produce terror in children is also prohibited (art. 11 of the Organic Education Act).

96. The Ministry of Transport and Communications requires television channels to establish programming schedules to suit the age of the viewing public. Programmes intended for adults must be aired after 9 p.m. and a prior announcement must be made that the content of the programme has been rated for adults only.

E. Freedom of thought, conscience and religion (art. 14 of the Convention)

97. Freedom of thought, conscience and religion is protected by the Constitution. All persons residing in the territory of the Republic have the right to profess their religious faith and to practise their religion privately or publicly, provided that it is not contrary to public order or to good customs (art. 65). The right to express one's thoughts by the spoken word or through any means of dissemination (art. 66) is also guaranteed.

98. The Venezuelan Government advocates secular education committed to the values of democracy and tolerance. However, in order to facilitate freedom of thought and religion, religious education is permitted during compulsory basic education, provided that the student's parents and representatives request it (art. 51 of the Organic Education Act).

F. Freedom of association and of peaceful assembly (art. 15 of the Convention)

99. Freedom of association and of peaceful assembly is guaranteed by the Constitution. Everyone has the right to meet with others, publicly or privately without prior permission (art. 71).

100. Meetings are held in most educational establishments to elect student representatives to student organizations, which, in turn, appoint representatives to the Educational Community. The holding of Children's Parliaments is an example of the exercise of this right. Adolescents and young people also meet in public places, especially along main avenues, for amusement and recreational activities.

G. Protection of privacy (art. 16 of the Convention)

101. Protection of privacy is guaranteed by the Constitution (art. 59 of the Constitution).

H. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37 (a) of the Convention)

102. Torture and cruel, inhuman or degrading treatment are specifically prohibited by the Constitution (art. 60).

103. The provisions of the Minors' Protection Act require all public and private bodies to prevent the abuse or ill-treatment of any minor (art. 5).

## V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

104. "Guardianship" is referred to in Venezuela's legislation in two legal situations. The first involves the handling and care of the inheritance of a child whose parents have died, but have appointed a guardian, or in the cases where the child's grandparents are alive or another relative is prepared to take the child into its care. In that case, the management of the child's property is subject to a number of controls, the most important being the Guardianship Council's approval of any transaction that affects that property (Book I, sect. IX, of the Civil Code). The other type of guardianship relates to children declared legally abandoned, in which case guardianship is assumed by the State, with no need for the appointment of supervisory guardians or the Guardianship Council to manage the minors' property (Book III, sec. III, of the Minors' Protection Act).

A. Parental guidance (art. 5 of the Convention)

105. Parental guidance is governed by the Civil Code and the Minors' Protection Act, both of which provide that the parents are the main persons responsible for raising their children. The Venezuelan Government respects the parents' right to bring up their children in the manner they deem most suited to their customs and traditions. The only restriction is that the interests of the child must be paramount and the child must be brought up

in an atmosphere conducive to tolerance and life in a democratic society. The joint exercise of parental authority by both parents reflects the desire to democratize family relationships.

106. Guardianship includes the protection, monitoring and guidance of children's education and is the joint responsibility of both parents. If a dispute should arise between the parents concerning the exercise of some of these functions, without necessarily implying a request by one parent that the other should be deprived of guardianship, the court will settle the dispute after hearing the parties (art. 37 of the Minors' Protection Act).

107. Parents have the right to decide what kind of education their children receive and to choose the educational establishment best suited to their needs, convictions and beliefs.

B. Parental responsibilities (art. 18, paras. 1 and 2, of the Convention)

108. Parents or the persons exercising parental authority have primary responsibility for the care of the children in their charge (art. 261 of the Civil Code). They have obligations relating to food, care and education and any other obligations that may be necessary for the full development of the child. In the absence of parents or legal representatives, the Government assumes those obligations. The Government's action is secondary to that of the parents (art. 1 of the Minors' Protection Act).

109. With regard to abandoned children, the National Children's Institute has a number of programmes to cater for the needs of children who lack adequate family care. These include the Children's Centres and House-Home and House-Workshop Programme, which provide care for children and young people who have been abandoned or are at risk, in accordance with their age-specific needs.

110. Although the Governments' action with regard to the care of children is secondary to that of the parents, pursuant to its obligations to ensure an adequate standard of living for children, it assumes responsibilities with regard to food, care and education in cases where the parents' economic and social situation prevents them from fulfilling those obligations.

111. The health and nutrition programmes for children currently being implemented by the Venezuelan Government (PAMI and INN programmes) were referred to above. Mention may also be made of the Day Care Home Programme, which has various health and development components, but also provides parents with reliable alternative care while they are at work.

112. In tandem with the above, a free public education system has been established in all types and at all levels of education in order to guarantee educational access to children from low-income families. In addition, the School Supplies and Uniforms Programme is designed for areas where poverty prevails in order to prevent children from feeling obliged to leave school because they are unable to acquire the tools required for their studies. Similarly, the Family Subsidy Programme (formerly called the Food Allowance)

pays a cash subsidy to poor families who keep their children in school. It not only boosts household income, but also encourages families to keep their children in the school system.

113. As may be seen, this set of programmes constitutes support by the Government for families living in an unfavourable economic situation and ensures an adequate standard of living for their children.

C. Separation from parents (art. 9 of the Convention)

114. The guiding principle for the family is the non-separation of children from their parents. Venezuela's legislation is based on the principle that the best place for the child to develop is within his family and his community. The juvenile court has the obligation to ensure that the measures it takes for the protection of children and adolescents are implemented within the family or community to which the child or adolescent belongs (art. 94 of the Minors' Protection Act).

115. The National Children's Institute has an obligation to help parents overcome the problems, difficulties or situations that justified the child's separation from the home (art. 116 of the Minors' Protection Act). This provision is based on the conviction that children should be protected within their families.

116. In labour matters, there are a number of provisions that protect children from separation from their parents. ILO Convention No. 117 on social policy, ratified by Venezuela in 1983, provides that, when workers' employment conditions involve their living away from home, account must be taken of their normal family needs(art. 6 of Convention No. 117).

117. The Organic Labour Act does not allow the employer to change the place of work if that involves a change of residence for the worker (art. 103 of the Organic Labour Act). This provision is based, inter alia, on the need to ensure that the family unit lives together in the same place and to prevent any displacement of the parents that could involve separation from their children.

118. Visiting rights are explicitly provided for in Venezuelan legislation. In the event of the parents' separation, the child has right to visit the parent who does not have custody. Should there be disagreement between the parents about the form and frequency of visits, these shall be determined by the juvenile court in the best interests of the child (art. 41 of the Minors' Protection Act).

119. On 19 July 1996, Venezuela ratified the Convention on the Civil Aspects of International Child Abduction, which is designed to guarantee that the child lives with the persons who have custody and to ensure that visiting rights are protected. The Convention establishes a simple and prompt procedure for obtaining the return of a minor kept unlawfully in another State party and for processing requests for visiting rights.

D. Family reunification (art. 10 of the Convention)

120. Family reunification is protected by the Venezuelan Government. A foreigner in possession of a residence permit is entitled to have a residence permit issued to his spouse or the person with whom he lives and to his minor children if they are foreigners (art. 7 of the Regulations governing the Entry and Stay of Foreigners in the Country).

E. Recovery of maintenance for the child (art. 27, para. 4, of the Convention

121. Child maintenance is one of the best protected rights in the Venezuelan legal system. A large percentage of legal proceedings in family and juvenile courts relate to maintenance awards.

122. Parents have a duty to maintain and support their children up to the age of 21 (art. 3 of the Minors' Protection Act). The obligation assumed by the State in case of default on the part of parents also covers that of other persons who have the same obligation. The obligation to provide maintenance applies to recognized and unrecognized children. Unrecognized children may apply for maintenance from their parents by supplying proof of filiation. If the judge deems the proof of a filiation to be adequate, he will award maintenance to the unrecognized child (arts. 43 and 44 of the Minors' Protection Act).

123. An application for maintenance may be submitted to the juvenile court by either parent or the child's legal representatives, by the National Children's Institute, the juvenile prosecutor, the municipal prosecutor, the civil authority of the municipality or parish where the minor lives or any other authority authorized by the National Executive. A judge may also institute proceedings ex officio (art. 45 of the Minors' Protection Act).

124. Juvenile courts can take a wide range of precautionary measures in order to ensure the payment of maintenance. For example, they can order the withholding of salary, the setting up of trust funds or any other preventive measure on the assets of the person whose duty it is to provide maintenance (art. 48 of the Minors' Protection Act).

125. Any default on the obligation to pay maintenance is punishable by fines of up to 10,000 bolívares (approximately US$ 21) or from 15 days' to 6 months' imprisonment, at the judge's discretion. The punishment may be doubled for repeat offences (art. 80 of the Minors' Protection Act).

126. Maintenance must be paid up to date in order to obtain permission to leave the country, to carry out transactions immovable and movable property, rights or remedies, to enter into contracts with the Government or to obtain Government benefits of any kind (art. 54 of the Minors' Protection Act).

F. Children deprived of a family environment (art. 20 of the Convention)

127. Children deprived of a family environment are protected by the Venezuelan Government. A juvenile court or any other authority responsible for the protection of children which receives information that a child or adolescent is being neglected places the child under the protection of the National Children's Institute (INAM). INAM takes all necessary steps to protect neglected children, preferably restoring the family environment or choosing an alternative home. If those measures do not put an end to the neglect, INAM requests a legal declaration of neglect in order to begin adoption proceedings (arts. 88 and 89 of the Minors' Protection Act).

G. Adoption

128. Adoption is an institution established basically in the interests of the adopted person (art. 1 of the Adoption Act). Adoption in Venezuela requires the authorization of the court and is carried out through a process whose aim is to ensure that the child's interest is paramount in the decision.

129. Adoption in Venezuela is subject to a number of requirements whose aim is to ensure the child's protection. The Public Prosecutor's Office must be notified of all adoption applications. The judge must consult all those he considers should give their opinion and must obtain expert opinions and psycho-social evaluations of the adoptive parents and of the child they wish to adopt.

130. The table below shows the cases of adoption and family placement processed through INAM between 1990 and 1995.

Children adopted and placed in foster homes through the National Children's Institute (INAM), 1990-1995

| Year | Fostered | Adopted | Total |
|---|---|---|---|
| 1990 | 1 974 | 2 390 | 4 364 |
| 1991 | 1 735 | 2 007 | 3 742 |
| 1992 | 2 287 | 1 803 | 4 090 |
| 1993 | 1 768 | 2 097 | 3 865 |
| 1994 | 2 276 | 1 872 | 4 148 |
| 1995 | 2 348 | 1 992 | 4 340 |

Source: National Children's Institute (INAM), Statistical Yearbook, various years.

131. Venezuela has ratified the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. Under this Convention, internal law incorporated the principles obliging the State to take appropriate steps to keep children in their families of origin and to give priority to national adoption over intercountry adoption.

H. Illicit transfer and non-return of children (art. 11 of the Convention)

132. Venezuela has ratified the Inter-American Convention on the International Return of Children and the Convention on the Civil Aspects of International Child Abduction as part of its commitment to combat illegal trafficking in children.

133. In Venezuela, minors may not leave the country without the prior authorization of their parents or legal guardians. Such authorization must be given by both parents to the passport authorities of the Ministry of the Interior or to the National Children's Institute. If the legal representatives are prevented from giving such authorization or are in disagreement, the juvenile court may authorize the child to leave the country.

I. Abuse and neglect (art. 19 of the Convention) including physical and psychological recovery and social reintegration (art. 39 of the Convention)

134. Children who are the victims of abuse and/or neglect by their legal guardians are protected by the Venezuelan Government. Children in the following situations may be deemed to be neglected:

(a) Children who have no means of subsistence;

(b) Children who are frequently deprived of food or the necessary health care;

(c) Children who have no fixed dwelling;

(d) Children who are habitually deprived of their parents' affection;

(e) Children who for no good reason do not receive education;

(f) Children who are victims of physical or mental ill-treatment;

(g) Children who are victims of sexual exploitation and children who, by reason of any other form of vulnerability, lead the State to deem them to be neglected (art. 84 of the Minors' Protection Act).

135. In such cases, protection by the State may consist of measures ranging from intervention within the family to the removal of the child from the family unit. Such removal is a last resort with the aim of protecting the child and the child is then placed in a foster home or in an INAM institution. Placement in a foster home is carried out with a view to the adoption of the

child and any measures taken should preferably be implemented within the community where the child lives (arts. 94 and 119 of the Minors' Protection Act).

136. The various measures that may be taken in cases of neglect are reflected in INAM programmes offering care to children who have been abandoned or are at risk, as follows:

(a) Nursery centres. These centres cater for under-sevens who have been abandoned or are at risk. They are given immediate temporary care with a view to the early initiation of adoption procedures;

(b) Residential homes. These are open institutions catering for children aged between 7 and 12 who have been abandoned or are at risk. They ensure children's attendance in formal education and promote their reintegration into the family unit. They also offer medical and psychological attention;

(c) Vocational homes. These centres cater for 12-18-year-olds who have been abandoned, are at risk or have broken the law. They are offered apprenticeships in a trade that will allow them to enter the labour market.

Children in National Children's Institute (INAM) programmes of care for children who have been abandoned or are at risk, 1990-1995

| Programme | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 |
|---|---|---|---|---|---|---|
| Total | 5 227 | 5 349 | 4 835 | 4 660 | 4 692 | 4 946 |
| Nursery centres | 591 | 773 | 711 | 644 | 590 | 667 |
| Residential homes | 1 362 | 1 390 | 1 384 | 1 507 | 1 294 | 1 425 |
| Subsidized private homes | | | | 112 | 100 | 124 |
| Vocational homes | 3 274 | 3 186 | 2 740 | 2 397 | 2 708 | 2 730 |

Source: National Children's Institute (INAM), Statistical Yearbook, various years.

7. Periodic review of placement (art. 25 of the Convention)

137. In cases of placement for the purpose of providing social education for young offenders, the National Children's Institute informs the juvenile court every three months of the situation regarding the minor's treatment and may suggest a change in the nature of the measure decided on. The Institute may also request the court to authorize, where appropriate, visits by the minor to his relatives on certain days or his attendance at education or vocational training centres in the community (art. 123 of the Minors' Protection Act).

## VI. BASIC HEALTH AND WELFARE

138. This section summarizes the principal programmes and policies implemented by the Venezuelan Government to ensure the health and welfare of the child population and concludes with a number of basic indicators showing what progress has been made in health and nutrition among Venezuelan children. Legal measures to guarantee the right to survival and development were described in section III.

139. The Government's obligations in terms of social policy include the duty of ensuring an adequate standard of living for children. It is obliged to take steps to guarantee children's welfare and promote the improvement of living conditions for the entire population (ILO Convention No. 117).

140. The Constitution establishes the Government's obligation to protect the family and ensure the improvement of its moral and economic situation (art. 73).

141. In accordance with its constitutional and legal obligations to guarantee an adequate standard of living to Venezuelan families and in particular to children, the Government has made a commitment to children in vulnerable situations. In addition, in order to meet its obligations under article 6 of the Convention, it has taken various measures to ensure the survival and development of the children living in the country. These measures were described briefly in earlier sections and will be described below in greater detail.

142. The Government guarantees the entire population access to health services, both preventive and curative. Throughout the national territory there are health care centres (hospitals and urban and rural clinics) which give their services free of charge to any person requesting them.

143. In addition, in view of the priority given to child care, work was begun in 1989 on designing the Extended Mother and Child Programme (PAMI). The aim of this programme was to protect the most vulnerable members of poor families (pregnant women, nursing mothers and children aged between six months and six years) from nutritional and health risks that might arise as a result of the implementation of the economic adjustment programme. To that end, the programme was designed to operate in rural clinics and in urban clinics in areas with concentrations of poor people. The PAMI strategy has three complementary components which target the same population, as described below:

(a) Health care programme. This component includes primary and preventive health services that traditionally cater for mothers and children; antenatal and postnatal checks, checks of healthy children, immunization, etc. Its aim is to improve preventive care for the PAMI target population;

(b) Mother and child nutrition programme. This is the most innovative component of PAMI. It consists of the supply of a nutrition supplement (milk or lactovisoy) to the programme's target population. This component has the dual aim of encouraging attendance at preventive consultations and, at the same time, contributing to the nutrition of a group considered to be at risk;

(c) Community Education Programme. This component complements the two others and its aim is to promote, in collaboration with non-governmental organizations, community awareness and education in the area of preventive health. The objective is to encourage greater awareness of the importance of prevention among the population in order to help improve their quality of life in that respect.

144. A massive extension of this programme throughout the national territory began in 1990 and has since operated without a break. In 1996, when "Agenda Venezuela" was drafted, a series of operational changes was suggested in order to increase the programme's efficiency. Work is currently continuing on those changes.

145. The various nutrition programmes implemented by the National Nutrition Institute are another important component of Government policies in this area. This Institute is the agency that directs nutrition policies in the country. Much of its activity targets the child population, since, in this age group, nutritional deficits can have irreversible effects. The programmes of the Institute that target this population are implemented jointly with the Ministry of Education and make use of the network of State schools for dissemination. The programmes are as follows:

(a) School milk programme. Involves the distribution of 200 cc of pasteurized milk a day to students of pre-school age and in the first six years of primary education in schools in poor areas of the country;

(b) School canteens. This programme finances the operation of the canteens to be found in some schools in the country, which offer pre-school and primary pupils with nutritional deficiencies one meal a day. The ideal of each school having its own canteen, both for the nutritional benefits it would provide and with a view to nutrition and hygiene training, has not been attainable owing to the high investment costs involved;

(c) School breakfast and snack programme. Distribution of a maize cake with protein content to the same target population as in the above-mentioned programmes. It has an advantage over the canteen programme insofar as it has lower operating costs, since the children's parents and representatives make a contribution to the preparation of the maize cakes.

146. In addition to the above-mentioned programmes, child policies include one other basic programme, namely, the Day Care Home Programme. This programme has been in operation since the 1970s and aims to provide comprehensive care for children up to the age of six while their mothers are at work. This system is innovative insofar as the cost involved is low: a day care home is based in the house of a mother belonging to the community, who receives a contribution from parents and a grant from the Child Foundation which covers the provision of the home and keeps the cost low for parents.

147. In the initial stage of operation, this was a low-coverage programme. However, the novelty of the approach and its proven success meant that the experiment was repeated in other Latin American countries.

148. For the same reasons, in the context of the 1989 economic adjustment programme, it was suggested that this programme should be expanded on a mass scale, in view of its advantages as a measure to protect children living in poverty during the economic adjustment. In the expansion phase two new modalities were created within the programme: exemption of households (whereby the child's representatives are not required to make a financial contribution, but are subsidized by the Government) and communal day care centres, which operate in community premises, cater for up to 40 children and are administered by NGOs with help from the Ministry of the Family.

149. The day care homes and community care centres offer children three meals a day (breakfast, lunch and an afternoon snack), as well as a daily routine in which time is spent on recreational and educational activities. In this way, the programme has become a successful alternative for integrated care for the population of pre-school age.

Social programmes in the areas of survival and development, 1989-1994

| Programmes | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 |
|---|---|---|---|---|---|---|
| Extended mother and child programme | | | | | | |
| Coverage | - | 490 773 | 1 320 908 | 861 601 | 999 108 | 944 626 |
| Percentage growth | - | - | 169.15 | -34.77 | 15.96 | -5.45 |
| Expansion of pre-school education | | | | | | |
| Coverage | - | - | 0 | 0 | 840 | 6 540 |
| Percentage growth | - | - | - | - | - | 678.57 |
| Day care homes | | | | | | |
| Coverage | 24 056 | 108 274 | 137 251 | 244 251 | 252 439 | 238 794 |
| Percentage growth | - | 350.09 | 26.76 | 76.96 | 3.35 | -5.41 |
| School milk programme | | | | | | |
| Coverage | 2 600 000 | 2 114 018 | 2 114 018 | 1 991 520 | 2 053 596 | - |
| Percentage growth | - | -18.69 | 0.00 | -5.79 | 3.12 | - |
| School breakfast and snack programme | | | | | | |
| Coverage | 600 151 | 759 099 | 1 030 186 | 911 669 | 953 092 | - |
| Percentage growth | - | 26.48 | 35.71 | -11.50 | 4.54 | - |
| School canteens | | | | | | |
| Coverage | 334 848 | 346 058 | 360 100 | 364 698 | 303 380 | - |
| Percentage growth | - | 3.35 | 4.06 | 1.28 | -16.81 | - |

Source: España, Luis Pedro (ed.), El Programa de enfrentamiento a la pobreza 1989-1993. Recomendaciones para su reforma, Caracas, Ministry of the Family - World Bank, 1995.

150. The table above shows changes in coverage for programmes in the area of survival and development during the period 1989-1994. The table below shows coverage for the same programmes during 1996, when they all received a major boost from the Agenda Venezuela programme.

Programmes in the area of survival and development, 1996

| Programme | Beneficiaries |
|---|---|
| Extended mother and child programme (PAMI) | 975 502 |
| Day-care homes | 350 000 |
| School breakfast and snack programme | 1 600 000 |
| School canteens | 711 000 |

Source: Ministry of the Family, Department of Social Information.

151. In addition to these programmes, which specifically target the child population, Venezuela has a social security system that protects workers. This system is financed through contributions from the State, employers and workers themselves. Benefits include comprehensive medical care, cash benefits for temporary incapacity, unemployment insurance and old-age or disability pensions. The agency responsible for administering the funds from the State, companies and contributing workers and for paying the benefits established by law is the Venezuelan Social Security Institute (IVSS).

152. The following benefits are available to children through the social security system and other measures to protect the working population:

(a) The Compulsory Social Security Act provides for health care for the children of contributing workers;

(b) Under the Organic Labour Act, all employers with more than 20 employees are obliged to set up and maintain creches where their workers can leave their children during the working day (art. 391).

153. In 1992, the National Executive, in fulfilment of those obligations in which employers and the State have joint responsibility, issued regulations on comprehensive care for the children of workers which made it possible for employers to meet their obligations to set up and maintain creches through the Day Care Homes Programme. These regulations helped to encourage and support the expansion and continuation of this Programme.

154. The following basic indicators show the situation of the child population in terms of health and nutrition, beginning with infant and maternal mortality.

Infant and maternal mortality rates, 1990-1995

| Mortality rate | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 |
|---|---|---|---|---|---|---|
| Infant | 25.6 | 20.6 | 22.0 | 24.0 | 24.6 | 23.5 |
| Neonatal | 14.0 | 12.2 | 13.5 | 14.9 | 14.0 | 13.4 |
| Post-neonatal | 11.6 | 8.4 | 8.5 | 9.1 | 10.6 | 10.1 |
| Maternal | 58.5 | 52.3 | 53.4 | 63.0 | 69.3 | n.i. |

Source: MSAS, Anuario de epidemiología y estadística vital, various years.

n.i.: No information.

155. As can be seen, the emphasis placed on primary health care for the mother and child population beginning in 1990, together with the remaining measures in the area of health and nutrition, brought rapid results which were reflected in a drop in all mortality rates within that population in 1991. The improvement did not continue, however. In the following years, mortality rates rose, although only slightly. These increases occurred in precisely those years in which the economic situation was beginning to improve after the adjustment. This suggests that the lapse in the indicators between 1992 and 1994 has more to do with the institutional problems referred to at the beginning of this report.

156. The momentum provided by the PAMI initiative at the beginning of the decade gradually slowed in the following years, as already shown. In 1996, various attempts were therefore made to increase the efficiency and impact of the programme in order to promote processes of institutional and policy reform that would allow a steady improvement in mother and child health.

Malnutrition in the population aged under 15, according to the weight-height indicator, 1990-1995

| Year | Percentage malnutrition | | Total nutritional deficit |
|---|---|---|---|
| | Moderate | Serious | |
| 1990 | 1.0 | 1.1 | 16.2 |
| 1991 | 0.8 | 0.7 | 13.7 |
| 1992 | 0.8 | 0.5 | 12.7 |
| 1993 | 0.7 | 0.5 | 12.2 |
| 1994 | 0.6 | 0.4 | 11.4 |
| 1995 | 0.6 | 0.4 | 11.6 |

Source: Food and Nutrition Surveillance System (SISVAN), Boletín Informativo, various years.

157. As can be seen, the situation with regard to child nutrition has improved steadily since 1990. Although the sharpest fall occurred in 1991, the trend remained the same in 1992.

158. These figures show that, although child health and nutrition policies have brought about some improvements, it is important to stress such policies in order to achieve the rates of improvement in these indicators that were envisaged in the National Plan of Action. Attempts are currently being made to give a fresh boost to this aspect of child-care policy, through the institutional coordination facilitated by the Social Cabinet. The new strategy seeks to achieve continuity of approach and sustained improvements in the situation of children.

## VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

159. This section outlines basic Government policies in the area of education, leisure and culture, including information on the Government's obligations under articles 28, 29 and 31 of the Convention. In addition, basic indicators are given showing the effects of these policies on the situation of the child population.

### A. Policies and programmes in the area of education

160. Education is free of charge in public educational establishments of all levels and types (art. 8 of the Organic Education Act). The body responsible for administering, planning and supervising the public education system throughout the country is the Ministry of Education.

161. Although formal education is the central pillar of the Government's education policy, other programmes and institutions are also competent in this area:

(a) Vocational training is provided by the National Institute for Education Cooperation (INCE), whose task is to give vocational training to children aged between 14 and 18. INCE courses are very varied and cover a wide range of disciplines and economic activities;

(b) In addition to the training offered by INCE, new programmes have been set up in recent years which offer work training to poor young people who have dropped out of the formal education system. Various non-governmental organizations have worked together to implement these programmes. The programmes, under the umbrella title of "youth training and employment", are currently administered by various public sector agencies: the Ministry of the Family and the Foundation for Youth and Change.

162. The aims of education relate to the training of a human being committed to the values on which the democratic system is based.

163. The education process aims at

> "the full development of the personality and the making of a healthy, cultivated, critical person capable of living in a democratic, just and free society based on the family unit and the work ethic; able to

participate actively and with awareness and a sense of solidarity in the processes of social change; and sharing the values of national identity and the attitudes that promote the strengthening of peace among nations and ties of integration and solidarity in Latin America. Education shall encourage the development of an awareness among citizens of the conservation, defence and improvement of the environment, the quality of life and the rational use of natural resources; and shall contribute to the formation and training of the human teams that are necessary for the development of the country and the promotion of creative efforts on the part of the Venezuelan people to achieve integral, autonomous and independent development" (art. 3 of the Organic Education Act).

164. The Minors' Protection Act reaffirms the objectives of educating for life in a democratic society and in freedom, noting that the Government should ensure that children receive an integrated education that will contribute to their upbringing as citizens prepared to live together in a democratic society and to protect it from practices or teachings that might foster intolerance (art. 1 of the Minors' Protection Act).

165. In order to guarantee access by the poor population to education, the Government has not only given priority to free education, but has also set up a series of programmes to encourage children from low-income homes to remain in the education system. The programmes are as follows:

(a) Family subsidy. Under this programme, the representatives of pre-school and primary school (up to sixth grade) children in schools located in poor areas of the country are given a subsidy for each child up to a maximum of three children per family. The programme, which was initially called the Food Allowance, has been in operation since 1989 and the original objective was to encourage students to stay in the school system, while, at the same time, providing a supplement to the family income in order to safeguard children's nutrition during the period of the adverse effects of the economic adjustment. Although it was designed as a short-term subsidy programme, it has continued since it was set up. In 1990, two new components were incorporated into the programme: a milk allowance and a cereal allowance. The intention was to underline the programme's nutritional aims by providing people with coupons that could be exchanged for food products (milk and maize flour). The programme continued to operate in this way until 1996, when, under Agenda Venezuela, various changes were made. First, the nutritional aims were set aside and the programme concentrated on providing a family income supplement in order to offset the effects of the new adjustment programme on vulnerable groups. This shift of focus meant the other components (milk allowance and cereal allowance) were dropped, the amount of the subsidy per child went up and the name of the programme was changed to reflect the new approach, ceasing to be called the Food Allowance and becoming known as the Family Subsidy;

(b) Provision of school uniforms and supplies. This programme began in 1990 as a complement to the Food Allowance. Its aim is to provide poor children with a uniform and basic supplies in order to meet school requirements and in this way prevent such children from dropping out of school

because the household is unable to meet these expenses. The target population is the same as that of the Family Subsidy and it has been in operation since it started without major changes of content;

(c) Expansion of pre-school education. In Venezuela, pre-school education is not compulsory, unlike primary education. As a result, the Ministry of Education's policy to extend education concentrated mainly on expanding the coverage of primary education. However, in 1989, with the advent of a new social policy approach targeting the most vulnerable groups, the importance of catering for the pre-school population (aged four to six) began to be appreciated. In addition, the National Conference on the Rights of the Child made the expansion of pre-school coverage a priority action area. These two factors led to the establishment of this programme, whose objective is to boost the construction of pre-school units in poor areas of the country and, at the same time, to promote teacher training in order to provide better quality education at this level. In order to implement the programme, the Foundation for the Expansion of Pre-School Education was established under the Ministry of Education.

Programmes implemented through the school network, 1989-1995

| Programmes | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 |
|---|---|---|---|---|---|---|---|
| *Food Allowance* | | | | | | | |
| Coverage | 1 387 040 | 1 851 153 | 2 653 266 | 2 877 319 | 2 619 873 | 2 783 149 | 2 844 000 |
| % growth | - | 33.46 | 43.33 | 8.44 | -8.95 | 6.23 | 2.19 |
| *Provision of school uniforms and supplies* | | | | | | | |
| *Coverage* | - | 1 711 000 | 2 230 917 | 2 999 969 | 2 998 251 | 3 010 463 | 2 616 861 |
| % growth | - | - | 30.39 | 34.47 | -0.06 | 0.41 | -13.07 |
| *Expansion of pre-school education* | | | | | | | |
| Coverage | - | - | 0 | 0 | 840 | 6.540 | n.i. |
| % growth | - | - | | | - | 678.57 | - |

Source: España, Luis Pedro (ed.): El Programa de Enfrentamiento a la Pobreza. Recomendaciones para su Reforma, Caracas, Ministry of the Family - World Bank, 1995.

166. These programmes are the main components of the Government's efforts to improve children's educational situation. The coverage obtained in each of these programmes is described below. The preceding table shows the growth in each programme. As can be seen, the main programmes operating through the

school network have achieved broad coverage and this has been maintained throughout the period. The expansion of pre-school education programme is the one with the lowest coverage, but this is not the only means of expanding pre-school education, as can be seen from the following table, which shows trends in enrolment in the formal education system. The table below shows the implementation of these programmes in 1996, when they received a fresh boost thanks to the approach adopted in Agenda Venezuela.

Implementation of programmes through the school network, 1996

| Programme | Beneficiaries |
|---|---|
| Family subsidy | 3 050 000 |
| Provision of school uniforms and supplies | 3 289 999 |
| Expansion of pre-school education | n.i. |

Source: Ministry of the Family, Office of Social Information.

167. In addition to these programmes, the Government has introduced a job training scheme for those who drop out of school at low educational levels or simply to boost workers' qualifications for their particular activities. This is the aim of the youth training programmes already mentioned. The following table shows the implementation of INCE in recent years, since this is the longest standing work training scheme and the one with the widest coverage.

INCE graduates and rate of growth, 1990-1995

| Year | Graduates | Growth (%) |
|---|---|---|
| 1990 | 359 480 | - |
| 1991 | 337 198 | -6.20 |
| 1992 | 308 712 | -8.45 |
| 1993 | 312 558 | 1.26 |
| 1994 | 317 847 | 1.68 |
| 1995 | 361 721 | 13.80 |

Source: Central Statistics and Informatics Office (OCEI), Annario Estadístico de Venezuela.

168. As can be seen from the table, the number of graduates from the various training courses offered by INCE went down until 1992. However, in 1993, the figures began to rise somewhat until, in 1995, they overtook the number of graduates at the beginning of the period. This shows that, at the beginning of the quinquennium, the economic adjustment programme and the budget adjustments that it entailed had a negative effect on this programme, but that coverage stabilized and recovered later.

Trends in enrolment in formal education, 1989-1995

| Level of education | Year | | | | | | Average for period |
|---|---|---|---|---|---|---|---|
| | 1989-1990 | 1990-1991 | 1991-1992 | 1992-1993 | 1993-1994 | 1994-1995 | |
| *Pre-school* | | | | | | | |
| Enrolment | 570 615 | 634 812 | 674 644 | 683 495 | 695 495 | 716 529 | |
| Percentage growth | - | 11.25 | 6.27 | 1.31 | 1.73 | 4.83 | 5.08 |
| *Primary (first to sixth grades)* | | | | | | | |
| Enrolment | 3 036 219 | 3 183 729 | 3 282 472 | 3 287 287 | 3 259 409 | 3 254 100 | 1.25 |
| Percentage growth | - | 4.86 | 3.10 | 0.15 | -0.85 | -1.01 | |
| *Primary (seventh to ninth grades)* | | | | | | | |
| Enrolment | 834 821 | 869 218 | 907 575 | 934 748 | 957 874 | 995 289 | 4.10 |
| Percentage growth | - | 4.12 | 4.41 | 2.99 | 2.47 | 6.48 | |
| *Secondary* | | | | | | | |
| Enrolment | 279 742 | 281 419 | 289 430 | 298 534 | 311 209 | 333 704 | 4.52 |
| Percentage growth | - | 0.60 | 2.85 | 3.15 | 4.25 | 11.78 | |

Source: Ministry of Education, Presupuesto y Estadísticas Educacionales, 1995.

169. The following section of the report describes the overall results of education policy in terms of the number of students enrolled in the formal education system. The preceding table shows that, on average, enrolments have tended to rise in all levels of education, although during the last two school years there has been a slight drop in the number of enrolments in primary education up to sixth grade. The biggest average increase in coverage has been in pre-school education, followed by secondary education.

170. Nevertheless, these rates of increase in enrolment by level should be seen in the light of the proportion of the population covered by each level. The following table therefore attempts to estimate the proportion of children and young people enrolled in the education system by taking only the population of each age group enrolled in the school system in order to estimate the specific enrolment rates at each level.

171. As can be seen from the following table, the level with the highest percentage of coverage is primary education up to sixth grade, while the level with the lowest coverage is secondary education. However, the percentage coverage of primary education up to sixth grade has tended downwards in recent years, while the coverage of secondary education has remained stable.

172. Pre-school education showed an overall rise in coverage by the end of the period. This reflects the priority that has been given to this age group in recent years. However, despite the existence of programmes such as the Family Subsidy and the Provision of School Uniforms and Supplies, coverage in primary education has not been maintained.

School age and pre-school age population covered by the formal education system, by level, 1990 to 1995

| Enrolment level | 1990-1991 | 1991-1992 | 1992-1993 | 1993-1994 | 1994-1995 |
|---|---|---|---|---|---|
| *Pre-school* | | | | | |
| Population enrolled (4-6) | 538 766 | 569 796 | 573 809 | 576 880 | 609 668 |
| Total Population (4-6) | 1 565 201 | 1 580 302 | 1 595 549 | 1 610 944 | 1 626 486 |
| Coverage (%) | 34.42 | 35.06 | 35.96 | 35.81 | 37.48 |
| *Primary (grades 1 to 6)* | | | | | |
| Population enrolled (7-12) | 2 494 482 | 2 560 469 | 2 554 363 | 2 543 206 | 2 535 131 |
| Total population (7-12) | 2 859 605 | 3 001 061 | 3 149 515 | 3 149 515 | 3 468 817 |
| Coverage (%) | 87.23 | 45.84 | 81.10 | 80.75 | 73.08 |
| *Primary (grades 7 to 9)* | | | | | |
| Population enrolled (13-15) | 584 131 | 602 882 | 622 077 | 645 474 | 668 525 |
| Total population (13-15) | 1 287 004 | 1 315 210 | 1 344 034 | 1 373 490 | 1 403 592 |
| Coverage (%) | 45.39 | 45.28 | 46.28 | 47.00 | 47.63 |
| *Secondary* | | | | | |
| Population enrolled (16-18) | 181 663 | 186 183 | 188 272 | 199 348 | 208 805 |
| Total population (16-18) | 1 164 991 | 1 202 363 | 1 202 934 | 1 280 742 | 1 321 828 |
| Coverage (%) | 15.59 | 15.48 | 15.17 | 15.57 | 15.80 |

Source: Central Statistics and Informatics Office (OCEI), Estimaciones y Proyecciones de Población 1950-2035; OCEI, Anuario Estadístico de Venezuela, various years; authors' estimates.

173. This situation could be linked to problems relating to the quality and continuity of the service offered. In this regard, the table below shows the drop-out, repetition and continuation rates in primary education, the level with the biggest problems, both in terms of the percentage increase in total enrolment and in terms of the specific enrolment rate.

Drop-out, repetition and continuation rates in primary education, 1989-1995

| Years | Drop-out | Repetition | Continuation |
|---|---|---|---|
| 1989-1990 | 6.44 | 10.84 | 89.15 |
| 1990-1991 | 7.09 | 11.06 | 88.94 |
| 1991-1992 | 8.88 | 11.21 | 88.79 |
| 1992-1993 | 9.28 | 11.34 | 88.65 |
| 1993-1994 | 8.17 | 11.26 | 88.74 |
| 1994-1995 | - | 10.72 | 89.28 |

Source: Ministry of Education, Presupuesto y Estadísticas Educacionales, 1995.

174. As can be seen, both drop-out rates and repetition rates tended to increase up to 1993. However, after that, an improvement can be seen in the various indicators.

175. To summarize, the Government has made great efforts to ensure mass education for children and has achieved high coverage levels, particularly in the first years of primary schooling. However, it is important to make even greater efforts to meet the challenge of catering to the entire population of school age and pre-school age in the country. Indeed, in order to combat the negative trends that have been observed, attempts have been made to devise a new plan of action to boost policies in this sector, an essential step towards improving the quality of life of children in Venezuela.

B. Leisure, recreation and cultural activities (art. 31 of the Convention)

176. Opportunities for leisure and recreation are provided for in the education programmes that are carried out in accordance with the recommendations of the Ministry of Education.

177. Sport and physical education are compulsory activities at all levels and in all types of institution within the education system (art. 12 of the Organic Education Act).

178. Some of the best opportunities for the pursuit of cultural activities are offered by extra-curricular education, in which programmes should be designed with the aim of providing the population with knowledge and habits that will raise their cultural and artistic level. Education of this kind should take advantage of the facilities offered by public and private cultural institutions in the pursuit of such aims (arts. 44 and 45 of the Organic Education Act). Within the official primary education curriculum, there are also various courses that attempt to give the student an artistic and cultural education. Choirs and theatre groups are often to be found in schools.

179. Another important initiative in terms of cultural activity for children is the national system of children's and young people's orchestras. Promoted by the National Cultural Council (CONAC) and the Ministry of the Family, this initiative has given a total of 8,589 children in 166 orchestras spread throughout the country the opportunity to learn and enjoy music*. The scheme has received recognition from such international organizations as UNESCO and has not only proved useful in providing Venezuelan children and young people with an opportunity for recreation and leisure, but has also made a contribution to the overall development of those children who have taken part.

180. The Children's Museum, which opened at the beginning of the 1980s, has also been of great benefit to the children of Venezuela. It is based on a novel approach, in that the museum exhibit both entertains and educates through activities related to the various sciences.

181. Through the National Parks Institute, the Ministry of the Environment, has also helped to provide opportunities for recreation. The Institute maintains a number of recreational parks and national parks throughout the country. Apart from providing a service to people of all ages, many of these parks offer special activities for children, such as sporting activities and holiday camps.

## VIII. SPECIAL PROTECTION MEASURES

182. This section deals with the measures adopted by the State to protect children in particularly difficult situations and specifically with the problem of child and juvenile offenders, child workers and children who are victims of sexual exploitation. The problems of refugee children and children in armed conflict are not discussed, since those situations do not arise in Venezuela. Venezuela has no groups displaced by armed conflict.

### A. Protection of child and juvenile offenders (arts. 37 and 40 of the Convention)

183. Criminal justice for children and adolescents in conflict with the law is the responsibility of the juvenile courts.

184. Capital punishment and life imprisonment are not permitted under the Constitution. Custodial sentences may not exceed 30 years (arts. 58 and 60).

185. Children and juveniles cannot be considered criminals and therefore cannot be punished for breaking the law, but must be referred for rehabilitation procedures, measures and treatment (art. 1, para. 6, of the Minors' Protection Act).

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* State Youth Orchestra Foundation: Censo de beneficiarios del sistema de orquestas y coros preinfantiles, infantiles y juveniles de Venezuela, 1996.

186. The regulations governing children and juveniles who break the criminal law is one of the areas most in need of reform in order to bring Venezuela's domestic provisions into line with the provisions of the Convention on the Rights of the Child. In the debate on the draft reform of the Minors' Protection Act, both governmental and non-governmental organizations have strongly emphasized the need for the amendment of the current regulations. The Minors' Protection Act defines as offenders "minors who take part in any act punishable under criminal law or police regulations" (art. 86) and does not establish a lower age limit for the imposition of penalties involving deprivation of liberty. In practice, juvenile courts tend not to hand down custodial sentences for acts defined as offences for children aged under 12, but prefer to use other measures in cases where children are accused of breaking criminal laws.

187. The Minors' Protection Act, which focuses solely on irregular situations, makes no distinction between the penalties that may be applied in the various circumstances the law recognizes. There is a general rule (art. 107), which is applicable to minors who have been abandoned, are at risk or have broken the law, and which establishes the following measures:

1. Placing of the minor in the care of his parents, custodians, guardians or responsible relatives

2. Supervision

3. Placement in a family

4. Attendance at a rehabilitation centre

5. Attendance at a treatment centre

188. In view of the fact that the aim of the process is to protect the juvenile and given that the judge has the prime responsibility of ensuring that the best interests of the child are upheld, the law is not fully able to guarantee due process in determining the facts of the irregular situation. The current discussion on the reform bill has indeed strongly emphasized guarantees of the right to defence and due process. In executing the measures ordered by the judge, every effort must be made to avoid the minors being removed from the place of residence of their relatives; to that end, the National Children's Institute will establish a diversified group of institutions throughout the country (art. 119 of the Minors' Protection Act).

189. In this respect, the National Children's Institute (INAM) provides a range of services for child and juvenile offenders. Its programmes are known under the umbrella title of Care for Minors in Need of Treatment and are based on the establishment of various kinds of rehabilitative institutions, as follows:

(a) Immediate Care Centres are closed establishments whose purpose is to carry out an initial evaluation of the child's situation, as provided for in article 103 of the Minors' Protection Act. At the same time, the child takes part in reeducation activities in the centre;

(b) Intensive care centres are also closed establishments, but they deal only with children and juveniles whose behaviour entails high personal and social risk, creating a need to remove them from their environment in order to offer them treatment commensurate with their problems. The reeducation process aims to make the children aware of their problems, to reinforce basic skills (reading, writing and arithmetic) and to offer a certain amount of work training. The length of stay in these centres is around nine months, after which the children and juveniles may return to take their place in their environment and the labour market;

(c) External consultation. This service seeks to evaluate the child or young person at risk or who is a potential offender, without removing him or her from the family environment;

(d) In addition to the above-mentioned programmes, INAM is responsible for guiding and supervising children and juveniles in the supervision regime.

Population covered by the programmes of care for children in need of treatment, 1990-1995

| Programme | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 |
|---|---|---|---|---|---|---|
| Total | 29 237 | 26 718 | 28 934 | 31 705 | 33 475 | 32 141 |
| Initial Evaluation Centres | | | 5 562 | 4 654 | 4 704 | 4 268 |
| Immediate Care Centres | 20 669 | 18 650 | 15 064 | 18 489 | 19 331 | 18 639 |
| External Consultations | 2 438 | 2 489 | 3 395 | 4 147 | 4 809 | 3 456 |
| Intensive Care Centres | 1 417 | 359 | 351 | 349 | 448 | 775 |
| Supervision Service | 4 713 | 5 220 | 4 562 | 4 066 | 4 183 | 5 003 |

Source: National Children's Institute (INAM), Anuario Estadístico, various years.

190. In order to bring the Minor's Protection Act into line with the provisions of the Convention, the draft Protection of Children and Adolescents Organization Act stipulates that: "Any minors who are proved to have been involved in any act punishable under the criminal laws shall be deemed offenders. Children below the age of 12 shall be subject only to the comprehensive protection measures provided for in Book III of this Act" (art. 197).

191. The discussion of the draft Act sparked a public debate that led to the formulation of a number of measures that will make it easier to guarantee the right to defence and will permit a better application of due process in proceedings aimed at helping child offenders. The text of the draft Act explicitly includes a large part of article 40 of the Convention and the Beijing Rules.

B. Protection of child and juvenile workers (art. 32 of the Convention)

192. Child workers are given twofold protection under the Venezuelan legal system, first for being children and, secondly, for being workers.

193. Work in general is protected under the Constitution and within that protection child workers are protected in particular (arts. 85 and 93 of the Constitution). The legal position of child workers can thus be described as protection within protection.

194. The overall legal regime for work is based on a set of public regulations that restrict the autonomy of parties to a labour contract and accord the worker a number of rights that are inalienable. Within this framework, minors have what is known as a special regime. The Government has explicitly adopted a range of regulations in order to ensure that these young workers have protection commensurate with their needs, which are also special.

195. According to the Constitution (art. 93), minors' labour is subject to special protection. It could be said, then, that it is subject to one protection within another, for the same Constitution states earlier, in more general terms, that "labour shall be subject to special protection" (art. 85). Recognition is also given to the obligation to protect children and juveniles from exploitation (art. 75).

196. Venezuela has ratified ILO Convention No. 138 concerning the minimum age for admission to employment, which obliges States parties to set a minimum age for admission to employment or labour and to pursue a policy of the progressive abolition of child labour.

197. The Organic Labour Act devotes one chapter to minors' labour. It sets a minimum age for working and regulates the relevant authorizations, prohibits certain types of work, establishes requirements for admission to employment, stipulates a shorter working day than that which applies to adult labour and sets forth guidelines relating to pay, holidays and apprenticeship and to the inspection of child labour. At the procedural level, the law establishes certain control mechanisms: medical examinations, records to be kept by the employer, a paybook and a work permit.

198. Similar provisions are to be found in the Minors' Protection Act, a number of which were incorporated unchanged into the Organic Labour Act. One important difference between the two Acts concerns penalties. Infringements of the special regime of the Organic Labour Act do not entail any specific penalty, but this is not the case with the Minors' Protection Act, which stipulates fines to be paid in cases of contravention of the rules to protect child labour (art. 36 of the Minors' Protection Act).

199. The National Institute of Educational Cooperation (INCE) Act establishes the Institute's competence in the area of apprenticeships and regulates this training and work regime.

200. Lastly, a number of regional or local provisions, notably the municipal ordinances regulating street selling, have a direct or indirect effect on the situation of child workers, insofar as they may require a minimum age of 18 before a permit for street selling is granted.

201. The competent bodies for the control of child labour and the protection of child workers are the Ministry of Labour, the National Children's Institute, the juvenile courts and the highest civil authority in the municipality or parish where the child worker lives.

202. The Ministry of Labour is responsible for formulating policies on work and for ensuring the application of the provisions of the Organic Labour Act (art. 586 of the Organic Labour Act). The Ministry can act in place of INAM and authorize minors below the age of 14 and over the age of 12 to work in specified circumstances (art. 247, para. 1, and art. 251 of the Organic Labour Act); issue medical certificates attesting to minors' physical and mental ability to do the work required (art. 232 of the Organic Labour Act); and issue paybooks to minors who offer their services under supervision (art. 263 of the Organic Labour Act) and identification cards to minors who work independently (art. 264 of the Organic Labour Act). INAM is empowered by law to authorize children to work in public performances, film, radio, television and advertising (art. 25 of the Minors' Protection Act).

203. In addition to the general competence of the above-mentioned agencies, according to the Organic Labour Act, the juvenile court and the highest civil authority may act in place of the legal representative to authorize a minor aged 14 or 15 to work (art. 248 of the Organic Labour Act).

204. The general minimum age for obtaining employment or work is 14 years. After that age, a child is considered fit to work (art. 247 of the Organic Labour Act and art. 23 of the Minors' Protection Act). Between the ages of 14 and 16, the young person needs the authorization of his or her legal representative in order to sign a labour contract (art. 248 of the Organic Labour Act).

205. The minimum age determines the ability to work, whether as an employee or independently. The law makes no distinction in this sense; on the contrary, it states that minors "may do work as defined under the provisions of this Act, perform the relevant activities and sign labour contracts" (art. 248 of the Organic Labour Act). The Organic Labour Act basically regulates paid labour, but it also covers independent work, as provided in articles 1 and 40.

206. The general rule of ability does not, however, mean that minors may perform a given service or activity if a certain law stipulates a higher age requirement.

207. Once the minimum age has been reached, a minor may not only work, but may also legitimately sign labour contracts, under the conditions laid down by law. The authorization required by a person aged 14 or 15 does not apply to the drawing up of the contract, but to the permission to sign it; thus, in the absence of such authorization, a contract may be signed without permission,

but still be valid. Conversely, below the age of 14, a contract signed by a minor would be null and void. Nevertheless, even though the contract was null and void, the minor would not forfeit the right to receive remuneration resulting from any work performed and any benefits or compensation under the law that might apply (art. 247 of the Organic Labour Act).

208. The law prohibits work before the age of 14 in any kind of activity, except where special authorization is given to work between the ages of 12 and 14, and the possibility of working in public performances, film, radio, television and advertising (art. 247 of the Organic Labour Act and art. 23 of the Minors' Protection Act).

209. Convention No. 138 states that the minimum age for employment may not be less than the age of completion of compulsory schooling and, in any case, not less than 15 years. However, a State whose economy and educational facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, initially specify a minimum age of 14 years (art. 2, paras. 3 and 4). The Convention applies to all types of activity, but States whose economy and administrative facilities are insufficiently developed may, after consultation as in the case above, limit the application of the Convention to certain branches of economic activity and types of undertakings (art. 5, paras. 1, 2 and 3). Venezuela has exercised the age option, so that the minimum age is 14; however, it did not specify any limitation on branch of activity to which the Convention should apply.

210. There are two situations in which Venezuelan law permits work before the age of 14. Conversely, in certain circumstances, those over the age of 14, but under the age of 18 are not allowed to work, and, the law recognizes the possibility of raising the minimum age for certain occupations.

211. Under Venezuelan law, persons below the age of 14 and above the age of 12 may be allowed to work in "duly justified circumstances" and in "tasks appropriate to their physical condition" and provided that their education is guaranteed (art. 247, para. 1, of the Organic Labour Act). Convention No. 138 also permits the employment or work of persons 14 to 15 years of age on work which is not likely to be harmful to their health or development or to prejudice their attendance at school, their participation in duly approved vocational orientation or training programmes or their capacity to benefit from the instruction received; the ages may be 12 and 14 years, as under Venezuelan law, for countries that have availed themselves of the option of 14 years as minimum age (art. 7, paras. 1 and 4).

212. Those "below the age of 16" may be allowed to work in public performances, films, theatres, radio or television programmes or in commercial advertising (art. 251 of the Organic Labour Act and art. 26 of the Minors' Protection Act). This is an exception to the rule insofar as it also covers children below the age of 14, provided that there are no other age limits; that is to say, the law does not state from what age a child can work in these areas. Convention No. 138 contains a provision with a similar aim to that of Venezuelan law: persons below the legal minimum age may be admitted to employment or work, after consultation with professional organizations and by means of individual permits, for such purposes as participation in artistic performances (art. 8).

213. The Minors' Protection Act and the Organic Labour Act expressly forbid children below the age of 18 to work in activities that are considered dangerous or that might affect their physical or mental development. This is an absolute prohibition covering children of any age below the age of 18. The legal prohibition applies to workplaces and types of work (art. 23 of the Minors' Protection Act).

214. The following are considered dangerous workplaces: mines, foundries, ships and liquor stores (arts. 249 and 250 of the Organic Labour Act). The following are considered dangerous occupations: those that present a risk to the worker's life or health, those that are beyond their physical capability, those that impede their physical development or jeopardize their intellectual and moral development, and night work except by explicit authorization from the Ministry of Labour (art. 257 of the Organic Labour Act). Apart from these explicit prohibitions, the law leaves it to the National Executive to raise the minimum age for occupations, under conditions it judges relevant to the interests of minors (art. 247, para. 2, of the Organic Labour Act).

215. Service occupations are subject to strict control, which is frequently the responsibility of the labour administration. Many of the prohibitions and conditions derive from a concern for the child's health and education. Certain jobs are therefore closed to children and, for others, they need special authorization from the public authorities (art. 251 of the Organic Labour Act). For the same reasons, there are explicit requirements in terms of care for the health of working children and restrictions on work time.

216. Child workers must present a medical certificate on starting work, which is issued free of charge by the State medical services (art. 252 of the Organic Labour Act) and they must undergo regular medical examinations (art. 253 of the Organic Labour Act), at least once a year and at the employer's expense in industrial or commercial establishments (art. 253 of the Organic Labour Act). The aim of the medical examination is to make sure that minors are in adequate physical and mental condition to perform a given job and to check at regular intervals that the work is not damaging their health or development; if it is found that such damage is being caused, the employer must pay for rehabilitation and provide the minor with a more suitable job.

217. Apart from this precaution, which applies to anyone below the age of 18, for those below the age of 16 who are authorized to work in public performances, films, theatres, radio or television programmes or in commercial advertising in cinema, radio, television or publications of any kind, a work inspector retained by the National Children's Institute sets the limits of the working time per day and the necessary conditions so that minors' physical and moral health is not damaged (art. 251 of the Organic Labour Act).

218. Lastly, the authorization of children aged 12 and 13 to work is conditional on their performing work appropriate to their physical condition (art. 247, para. 1, of the Organic Labour Act).

219. The regulation of children's or adolescents' working time is also related to their health and to their educational or training needs. The law provides for a reduced working day, working only during the day and rest

periods; it also provides that work and holidays should fit in with their school timetable. Minors may work only during the day and from 6 a.m., except with special authorization from the public authorities (art. 257 of the Organic Labour Act).

220. Up to the age of 16, minors' maximum ordinary working day is 6 hours, and 30 hours per week; their working day should be divided into two periods and they may not work more than four hours at a stretch; there should be a minimum rest period of two hours, during which minors must leave the workplace (art. 254 of the Organic Labour Act). If the work is by its nature intermittent, they may work up to eight hours, with a minimum rest period of one hour (art. 255 of the Organic Labour Act).

221. As regards the working day, there is a general statement to the effect that "employers who employ minors must grant them adequate facilities, compatible with work needs, to allow them to complete their school programmes and attend vocational training schools" (art. 261 of the Organic Labour Act).

222. In the specific case of apprentices - working minors undergoing systematic vocational training - the time allotted to their vocational training is considered part of the working day (art. 271 of the Organic Labour Act).

223. With regard to holidays, the law stipulates that a minor must take holidays from work during the months of school holidays and that, if necessary, he can exercise that right in the company up to three months in advance or up to seven months in arrears, in his own interest (art. 260 of the Organic Labour Act).

224. Certain control mechanisms, as described above, exist to ensure compliance with these provisions: these are, basically, the work permit - as distinct from the paybook - which shows the school the minor attends and his timetable; the minors' register kept by the company, which shows minors' grade and the school they attend; and notification of the employment of minors as domestic servants to INAM and as apprentices to the labour inspectorate, both of which have the competence and mandate to monitor compliance with the law (arts. 262, 270 and 247, para. 2, respectively, of the Organic Labour Act).

225. In line with the ban on age discrimination in working conditions (art. 26 of the Organic Labour Act), there is a specific ban on discrimination against minors with regard to pay, the aim of which is to prevent minors being paid a lower wage than other workers (art. 258 of the Organic Labour Act). The payment of minors by results is also prohibited (art. 259 of the Organic Labour Act). In addition, minors undergoing vocational training are granted a share of the profits from their labour (art. 32 of the Minors' Protection Act).

226. The law prohibits payment by results for child workers. If this ban is ignored, the labour inspector sets the level of the minor's salary, taking account of the type of work and wage levels in the area (art. 259 of the Organic Labour Act).

227. Lastly, aside from labour relations as such, minors who are undergoing vocational training and who take part in the production of products for sale in the market place are entitled to a share of not less than 50 per cent of the net profits on the sale, distributed proportionately among the parties concerned. Their share must be deposited in a savings account in their name (art. 32 of the Organic Labour Act).

228. In practice, however, these rules clash with a resistance that is hard to overcome owing to the inadequacy of inspection and health services and the economic needs of children and adolescents, which force them to accept any work, most likely without sufficient awareness of the danger it could involve, as well as for other reasons.

229. The following table gives an estimate of the child and juvenile population within the labour market.

Population aged 10-24, by situation in the labour force and age group, 1990 to 1993

| Position in labour force | Year | | | |
|---|---|---|---|---|
| | 1990 | 1991 | 1992 | 1993 |
| Age 10-14 | 2 535 333 | 2 458 185 | 2 535 333 | 2 538 182 |
| Employed | 95 113 | 75 549 | 95 113 | 56 925 |
| Unemployed | 8 679 | 9 413 | 8 679 | 9 866 |
| First-time job seekers | 1 304 | 998 | 1 304 | 652 |
| Inactive | 2 430 237 | 2 372 225 | 2 430 237 | 2 470 739 |
| Age 15-24 | 3 888 756 | 3 882 102 | 3 956 146 | 3 995 812 |
| Employed | 1 422 586 | 1 492 786 | 1 515 188 | 1 446 584 |
| Unemployed | 257 219 | 231 474 | 198 040 | 205 981 |
| First-time job seekers | 54 898 | 49 642 | 37 279 | 31 299 |
| Inactive | 2 154 053 | 2 108 200 | 2 205 639 | 2 311 948 |
| Rates | | | | |
| Age 10-14 | | | | |
| Participation rate | 4.15 | 3.50 | 4.15 | 2.66 |
| % Child workers | 3.75 | 3.07 | 3.75 | 2.24 |
| Unemployment rate | 9.50 | 12.11 | 9.50 | 15.60 |
| Age 15-24 | | | | |
| Participation rate | 44.61 | 45.69 | 44.25 | 42.14 |
| % Juvenile workers | 36.58 | 38.45 | 38.30 | 36.20 |
| Unemployment rate | 17.99 | 15.85 | 13.44 | 14.09 |

Source: Central Statistics and Informatics Office (OCEI), Indicadores de la Fuerza de Trabajo, various years.

230. As can be seen from the above table, it is not common for members of the 10-14 age group to work; barely 2.6 per cent of this age group declared itself active (employed, unemployed or seeking work for the first time) in 1993. Accordingly, there is broad scope for policies to prevent the exploitation of child labour.

231. The high rates of unemployment among both age groups are a noteworthy feature. Given that the total national unemployment rate was 6.3 per cent, it can be assumed that, despite the existence of legislation to discourage age discrimination against workers, there is a preference in the market for adult workers, which is reflected in the unemployment rates among young people. It is for that reason that much emphasis has been placed on work training programmes for young people which aim to facilitate and improve the position of young persons in the labour market. These programmes are implemented by the Ministry of the Family and the Foundation for Youth and Change and are a key means of improving adolescents' and young people's integration into the labour market.

## C. Other protection measures

### 1. Sexual exploitation and sexual abuse (art. 34 of the Convention)

232. There is a wide range of measures to prevent sexual exploitation and sexual abuse. In the first place, minors' participation in public performances, films, commercial advertising and radio or television programmes that do not respect the dignity of persons, including children, is prohibited. Minors may also not enter bars or night clubs without their parents (art. 20 of the Minors' Protection Act). Minors may not be admitted or received into hotels, motels or similar places without permission from their parents or legal representatives (art. 22 of the Minors' Protection Act).

233. In addition, the offence of incitement of a minor to prostitution is punishable by prison sentences of between 3 and 18 months. Where the children involved are under 12, the punishment is between one and four years' imprisonment (art. 388 of the Penal Code).

234. Venezuela ratified the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others in 1968, committing itself to punish "any person who, to gratify the passions of another: (1) procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; (2) exploits the prostitution of another person, even with the consent of that person" (art. 1).

### 2. Children belonging to a minority or an indigenous group (art. 30 of the Convention)

235. The Constitution and the Organic Education Act recognize the right of indigenous communities to preserve their language and cultural identity (arts. 77 and 50, respectively).

236. The Education Act guarantees that the State will pay special attention to indigenous groups and preserve indigenous communities' socio-cultural values. Relevant educational services will be established to that end. Similarly, programmes aimed at the same objectives will be devised and implemented (art. 51 of the Organic Education Act). In order to comply with these provisions, bilingual educational programmes are to be set up to serve the various indigenous communities in Venezuela.

## List of annexes

Constitution of the Republic of Venezuela

Civil Code

Code of Civil Procedure

Penal Code

Minors' Protection Act and Regulations

Adoption Act

Family Protection Act

Social Security Act

Aliens Act and Regulations

National Children's Institute Act

National Health System Organization Act

Organic Labour Act

Organic Education Act

Organic Act on Remedies of Protection for Constitutional Rights and Guarantees

Military Conscription and Readiness Act

Copyright Act

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